



Report of the Cabinet Member for Care, Health and Ageing Well

Cabinet – 15 August 2018

Establishing a Partnership Agreement for Pooled Funds for Care Homes

Purpose:	To seek approval from Cabinet to enter into a partnership agreement under S33 National Health Service (Wales) Act 2006 (“NHS”) with NPT Council and Swansea Bay Health Board for the purposes of creating a regional pooled fund for care homes.
Policy Framework:	Part 9 Social Services and Wellbeing (Wales) Act 2014 (“SSWBA”)
Consultation:	Access to Services, Finance, Legal.
Recommendation(s):	<p>It is recommended that:</p> <ol style="list-style-type: none">1) Approval to enter into the attached S33 agreement is granted, and authority to vary or amend any of the provisions within the agreement, as may be required to ensure arrangements remain fit for purpose and to meet obligations under part 9 of the SSWBA, is delegated to the Director of Social Services.
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1. Introduction

- 1.1 This report explains the context for Regional Pooled Funds for Care Homes. It highlights the legal duty to achieve pooled fund arrangements, sets out the legal duty to enter into a partnership agreement for establishing pooled funds, explains the features of the agreement that is proposed, makes a recommendation for approving the s33 agreement, and delegating authority to the Director of Social Services for the purposes of agreeing any subsequent amendments or variations.

2. Legal Context

- 2.1 The legal duty to develop pooled fund arrangements arises under Part 9 of the Social Services and Well-being (Wales) Act 2014. The Partnership Arrangements (Wales) Regulations 2015 require “partnership bodies for each of the partnership arrangements to establish and maintain pooled funds” including in relation to “the exercise of their care home accommodation functions.”
- 2.2 Section 9 of the Part 9 statutory guidance (Partnership Arrangements) states that these duties took effect from **6 April 2018**. Section 9 states that Local Health Boards and local authorities are expected to:
- Undertake a population needs assessment and market analysis to include the needs of self-funders.
 - Agree an appropriate integrated market position statement and commissioning strategy which specifies the outcomes required of care homes; range of services required and methods of commissioning.
 - Agree a common contract and specification.
 - Develop an integrated approach to quality assurance.
 - Adopt transparent use of resources, with aligned budgets, identifiable expenditure and shared financial commitments.
- 2.3 Paragraph 62 of the statutory guidance makes it clear that these arrangements will need to be subject to a formal written agreement.
- 2.4 Rebecca Evans AM, in her ministerial statement of the 10.10.17 acknowledged the difficulties of achieving full implementation by April '18 and confirmed she will allow commissioning bodies until the end of the April '19 to deliver pooled fund requirements before considering intervention.

3. Scope of the Pooled Fund

- 3.1 The pooled fund will include care and accommodation for adults who need long term care in registered residential settings because they have complex health and social care needs that require supported interventions on a 24 hour basis that cannot be delivered in their own home or alternative settings.
- 3.2 The pooled arrangement will apply to commissioned services i.e. residential, nursing and continuing health care funded beds.
- 3.3 It will apply regardless of the cost of placement and will therefore include some specialist provision; for example care for people who have acquired brain injury or a degenerative neurological disorder.
- 3.4 It will apply for those who have physical health and social care needs as well as those who are living with dementia.
- 3.5 Welsh Government have indicated that Pooled Fund arrangements should eventually apply to all adult care homes but have not specified timescales for achieving this.

4. Current Expenditure

- 4.1 The most up to date figures confirming annual gross expenditure on care home services for older people confirms regional spend of circa £64m. See table below for breakdown:

REGIONAL PARTNER	GROSS ANNUAL EXPENDITURE AT YR END 18/19
NPT	£20 242 000
CCOS	£24,071,750
Swansea Bay Health Board	FNC and CHC 65+ £18,300,000
TOTAL REGIONAL SPEND	£62,613,750

5. Purpose of Pooled Funds

5.1 Pooled funds are a mechanism for achieving integrated systems of care. Currently commissioning arrangements across the West Glamorgan region are divided across two local authorities and one health board and further subdivided into separate narrowly defined service area budgets. Theoretically this fragmentation can make it more difficult to commission integrated care. Pooling budgets between commissioners is seen by Welsh Government as the most practical and efficient way to overcome fragmentation and jointly commission as a whole system. Examples of intended benefits include:

- Less duplication by eliminating or reducing similar processes undertaken and funded by different commissioners.
- Fewer gaps as more integrated commissioning maximises the opportunity to target resources where they are needed. For example by creating combined integrated services to meet complex needs.
- Reduced silo working where separate budget pressures and processes can lead to different priorities or unilateral decision making which can have destabilising impacts (in relation to fee rates for example).
- More efficient process with fewer coordination problems which can occur when separate organisations have differing processes, timescales for delivery and capacity levels for different roles and functions.
- Reduced delays which occur when decision-making involves more than one commissioner, requiring multiple agreements.

5.2 Welsh Government views closer integration through pooled funds as a mechanism for achieving better quality and more efficient services by encouraging partners to collaborate in ways that maximises their capacity to shape the market.

5.3 The private sector care homes market is perceived to be in a weak position. Citizens' right to choose care home accommodation has led to systems for purchasing placements which lean more towards passive procurement than active commissioning. Like other social care markets, the care homes sector is under considerable pressure and is characterised by certain features. Workforce pressures, recruitment and retention of staff, financial difficulties, regulatory change, population change and increasing needs are combining to impact service delivery and sector stability.

- 5.4 Pooled funds are an opportunity for partners to work together to understand issues affecting quality and stability of services. Shared understanding and common goals can help to develop more strategic, collaborative solutions for improving care and providing more relevant, sustainable services. This does not mean homogenising all services and practices. Local differences in contracting and commissioning arrangements which are necessary to maintain effective services will be accommodated where appropriate.

6. Progress to Date

- 6.1 Many of the requirements needed to establish pooled fund arrangements are already in place:
- 6.2 West Glamorgan region has undertaken a population needs assessment with input from the 2 LAs, Swansea Bay HB and the third sector with engagement and consultation from service users/ citizens.
- 6.3 A regional care homes commissioning strategy has been created and endorsed by each of the LAs and the Health Board.
- 6.4 Each local authority has created a Market Position Statement (MPS) which has enabled the development of a regional integrated MPS document.
- 6.5 An integrated approach to quality assurance has been developed via the Regional Quality Framework (RQF)
- 6.6 Work to create a common contract to enable each partner to purchase care home placements across the region using harmonised terms and conditions is near to completion. The finalised contract will be implemented by each partner during 2019.
- 6.7 A common process for setting fee rates is being explored. It is intended that this will lead to a shared methodology but not a shared rate.
- 6.8 A common data set for mapping and evaluating care home spend and placement activity has been developed. This will be used to generate two monthly financial management reports which will underpin pooled fund arrangements and enable senior management governance and oversight.
- 6.9 Template s33 agreements for legally binding partnership agreements have been created.

7. Type and Content of Partnership Agreement

- 7.1 To meet obligations arising under Part 9 of the Act the West Glamorgan partnership have opted to develop a s33 National Health Services (Wales) Act 2006 partnership agreement. Whilst the Act allows for the creation of a Part 9 legal agreement, most regions across Wales have opted for the more familiar s33 arrangements. This enables a legal contractual partnership to form on the basis of previously tried and tested arrangements. Under s33 NHSA, a local authority may carry out specified functions on behalf of any of the other partnership bodies taking part in the same partnership arrangement. Exemplar templates for creating similar agreements offered by the National Commissioning Board to support pooled fund development are also based on section 33 provisions.
- 7.2 Regional boundary changes and uncertainty over obligations in light of Partnership reconfigurations has delayed progress, however a s33 agreement has been created. This is based on equivalent partnership agreements currently used across the region to successfully implement pooled arrangements for intermediate care services. Subtle changes have been made to the existing s33 agreement to enable it to apply in the context of care home services.
- 7.3 The agreement is underpinned by a number of schedules which detail the practical arrangements for administering pooled funds. These have been carefully constructed to minimise financial and political risks. Potential for cross subsidising placements has been removed. There are no impacts to workforce or organisational structures. There are no impacts to commissioning process compatibility for partners.
- 7.4 The schedules attached to the agreement are as follows:
- Schedule 1 defines the services under the pooled fund and the aims and objectives to be achieved.
 - Schedule 2 defines the Health Board's health care functions and the Councils' health related care functions.
 - Schedule 3 defines resources that comprise the pooled fund and all related finance and budget setting requirements.
 - Schedule 4 defines arrangements for governance, oversight and performance.
 - Schedule 5 defines arrangements for aligning expenditure.

- 7.5 Whilst the substantive content has been agreed by Partners some further modest amendments and revisions may be required by Partners before the agreement is finalised. Delegating authority to the Director of Social Service to approve and any subsequent amendments or variations will avoid the need for further unnecessary delays or representations to Cabinet.
- 7.6 The current proposal is for Swansea Council to host and administer the pooled fund. This will create an additional small administrative burden and audit responsibilities but no significant additional extra cost liabilities.

8. Recommendation

- 8.1 It is recommended that: Approval to enter into the attached s33 agreement is granted, and authority to subsequently vary or amend any of the provisions within the agreement or accompanying schedules, as may be required to ensure arrangements remain fit for purpose and to meet obligations under part 9 of the SSWBA, is delegated to the Director of Social Services.

9. Equality and Engagement Implications

- 9.1 The Council is subject to the Public Sector Equality Duty (Wales) and must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

Our Equality Impact Assessment process ensures that we have paid due regard to the above.

- 9.2 Pooled Fund objectives are intended to create more integrated services which improve services. An EIA screening form has been completed with the agreed outcome that a full EIA report is not required at this stage. Some consultation may occur should more detailed proposals or service changes occur. Arrangements will continue to be screened for equality impacts and full EIA reports will be completed if required.

10. Financial Implications

- 10.1 There are no significant costs expected from the administration of this s33 agreement. Any that do arise will be met from current resources and shared with partners where appropriate.

11. Legal Implications

- 11.1 Legal implications have been referred to more broadly in the body of the report. There is a legal duty arising under Part 9 of the SSWBA to establish a partnership agreement for the purposes of creating pooled funds for care homes.

Background Papers: None

Appendices:

Appendix A - Section 33 Agreement relating to Pooled Funds for Care Homes and accompanying Schedules 1 to 5.